BEFORE THE POLLUTION CONTROL HEARINGS BOARD STATE OF WASHINGTON

<pre>IN THE MATTER OF PETER KIEWIT) SONS' CO.,)</pre>	
Appellant,)	PCHB No. 47
vs.	FINDINGS OF FACT, CONCLUSIONS
SOUTHWEST AIR POLLUTION CONTROL) AUTHORITY, STATE OF WASHINGTON,)	AND ORDER
Respondent.)	

This matter came on for hearing by the Pollution Control Hearings Board (Walt Woodward, hearing officer), at 11:30 a.m., May 13, 1971, in the Clark County Health Center, Vancouver, Washington. Appellant was represented by Ellsworth Larson; respondent was represented by its counsel, James Ladley, and by William A. Pratska.

This is an appeal from a civil penalty of \$100 levied by respondent for an alleged violation by appellant of Section 4.01 of Regulation 1 of the Southwest Air Pollution Control Authority.

Witnesses were sworn and testified and exhibits were admitted.

On the basis of testimony and exhibits, the Pollution Control
Hearings Board makes the following

FINDINGS OF FACT

I.

On March 30, 1971, near the trailer headquarters of appellant at Woodland, Clark County, Washington, appellant caused an open fire of used oil filters, oily rags, timber scraps and paper to

burn in violation of Section 4.01 of Regulation 1 of the Southwest Air Pollution Control Authority.

II.

Appellant was served on that date with Violation Notice
No. CS 0567, and immediately extinguished the fire. Appellant
believed the fire was within the purview of permissible household
trash fires and was not wilfully in violation of Section 4.01 of
Regulation 1 of the Southwest Air Pollution Control Authority.

III.

Viciation Notice No. CS 0567 contains a printed instruction to "advise the Vancouver office (of the Southwest Air Pollution Control Authority) in writing within 10 days of the corrective action you have taken, or will take, to prevent continued or recurrent violations." Pursuant to this notice, appellant on March 31, 1971, wrote the Southwest Air Pollution Control Authority, detailing its misunderstanding of the regulation and giving assurance that "in the future (it would) refrain from this type of burning."

IV.

On March 31, 1971, prior to receiving appellant's letter, respondent levied a civil penalty of \$100 against appellant for the offense cited in Notice of Violation No. CS 0567.

Having considered these Facts, the Pollution Control Hearings Board comes to these

CONCLUSIONS

I.

Appellant was in violation of Section 4.01 of Regulation 1 of the Southwest Air Pollution Control Authority. The violation was technical; it was not wilful.

II.

Respondent's printed advice on its Notice of Violation No. CS 0567, calling for a response "within 10 days" is not consistent with respondent's action, one day after the violation, of invoking a civil penalty for that violation; it is, at best, confusing as to whether the Authority desires compliance or penalty.

III.

A nominal civil penalty would appear to be more in line with the mutigating curcumstances in this matter.

Therefore, the Pollution Control Hearings Board sustains the Southwest Air Pollution Control Authority in its issuance of Notice of Violation No. CS 0567 against appellant, but directs the Southwest Air Pollution Control Authority to reduce the civil penalty in connection therewith to an amount more commensurate with the circumstances.

DONE at Olympia, Washington this first day of June, 1971.

POLLUTION CONTROL HEARINGS BOARD

Matthew W. Hill, Chairman

James T. Sheehy, Member

Walt Woodward, Member